IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4691 OF 2005

Cart Mart Pvt. Ltd. & Anr. .. Petitioners

V/s

Bombay Mercantile Co-operative Bank Ltd. .. Respondents

Mr.D.D. Madon with Mr.Palav i/b Udwadia & Udeshi for the Petitioners.

Mr.T.N. Tripathi with Mr.S.K. Tambawalla for the Respondents.

CORAM : H.L. GOKHALE &
MRS. R.S. DALVI, JJ.

DATE : 20TH JULY 2005

P.C. :

1. Heard Mr.Madon for the Petitioners. Mr.Tripathi appears for the Respondents.

2. This Petition makes a grievance with respect to the order passed by the Chairperson of the Debt Recovery Appellate Tribunal on 4th July 2005. By this order, the learned Chairperson has dismissed Appeal No.272 of 2004 filed by the Petitioners herein. Mr.Madon, learned counsel for the Petitioners, points out that this Appeal was not argued before the learned Chairperson. The Petitioners had moved an application for waiver in that Appeal and subsequently, on instructions and legal

advise, had filed a Pursis on 27th April 2005 to withdraw the waiver application. He submits that it is this application to withdraw the waiver application which was argued before the learned Chairperson on 5th May 2005. He has made a statement that he himself argued this application and which is borne out by the roznama recorded by the learned Chairperson on that date. The roznama shows that Mr.Madon and Mr.Palav have appeared for the Appellants and Mr.Tripathi for the Respondent. Thereafter it records as follows:-

> "Heard both the sides on the point whether the Appellants are required to file waiver application. Stand over for orders on the point whether waiver of deposit application is required to be tendered to 31/5/2005."

The impugned order has been passed one month thereafter on 4th July 2005 and it records that Mr.Palav has appeared for the Appellants but not Mr.Madon. The order goes into the merits of the Appeal and dismisses it on the ground of maintainability and, therefore, it states thereafter that there was no question of application for waiver of deposit.

3. Mr.Madon, learned counsel for the Petitioners,

submits that the roznama along with the impugned order will show that the Appeal was not argued at all. All that he submits is that the Appellants must get an opportunity to argue the Appeal before the same is decided one way or the other. His submission however is that the Appellants would like the application to withdraw the waiver application to be heard. Mr.Tripathi, learned counsel for the Respondent Bank, submits that the application be heard along with the waiver application and at that stage if the Appellate Tribunal is so inclined, it may hear the Appeal though with full notice to both the parties.

4. We accept the submission of Mr.Tripathi. The Appellate Tribunal is expected to hear the parties on the application which they will make before the Tribunal with due notice to them. From the record, it is seen that it is a particular application which was argued and adjourned for orders.

5. In the circumstances, we set aside the order passed by the learned Appellate Tribunal on 4th July 2005, restore the Appeal as well as the waiver application and the application to withdraw the waiver application to the file of the Appellate Tribunal. Since the Appeal is being restored, the interim order

passed on 1st December 2004 during the subsistence of the Appeal will stand restored.

6. Mr.Tripathi makes a request that the waiver application or the application to withdraw the same and if possible the Appeal be all heard at the earliest. The request of Mr.Tripathi is quite legitimate. We expect that the learned Chairperson of the Appellate Tribunal will hear these two applications and if possible the Appeal at the earliest.

7. Petition stands allowed in the above terms.

(H.L. GOKHALE, J.)

(MRS. R.S. DALVI, J.)